

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTOINE DESHAWN BARNES,

Plaintiff,

v.

DEPARTMENT OF TREASURY, et al.,

Defendants.

No. 2:21-cv-2101 JAM CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On May 3, 2022, the court recommended that this action be dismissed for plaintiff's failure to file a request to proceed in forma pauperis or pay the filing fee. Plaintiff filed a motion to proceed in forma pauperis on May 23, 2022. Accordingly, the court's recommendation that this action be dismissed will be vacated.

As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request to proceed in forma pauperis will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to

1 the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing
2 fee is paid in full. 28 U.S.C. § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
5 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
6 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
7 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

8 The court has reviewed plaintiff's complaint and finds that it fails to state a claim upon
9 which relief can be granted under federal law. Plaintiff's complaint must be dismissed. The
10 court will, however, grant leave to file an amended complaint.

11 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
12 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.
13 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in
14 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.
15 § 1983 unless there is some affirmative link or connection between a defendant's actions and the
16 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory
17 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
18 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

19 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
20 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
21 complaint be complete in itself without reference to any prior pleading. This is because, as a
22 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
23 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
24 longer serves any function in the case. Therefore, in an amended complaint, as in an original
25 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

26 /////

27 /////

28 /////

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 10) is granted.

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
4 shall be collected and paid in accordance with this court's order to the Director of the California
5 Department of Corrections and Rehabilitation filed concurrently herewith.

6 3. Plaintiff's complaint is dismissed.

7 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
8 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
9 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
10 number assigned this case and must be labeled "Amended Complaint." Failure to file an
11 amended complaint in accordance with this order will result in a recommendation that this action
12 be dismissed.

13 5. The court's May 3, 2022, recommendation that this action be dismissed is vacated.

14 Dated: July 25, 2022



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

15
16
17
18
19 1/mp
20 barn2101.cdc
21
22
23
24
25
26
27
28